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on December 17, 2002

Rimma Mitelman 12/17/02
RIMMA MITELMAN Date of
Reg. No. 34,396 Signature
Attorney for Applicant(s)



PATENT \$ 3700

#24
Appeal Brief
S. Zimmerman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Customer No.: 000201
Attorney Docket No.: C3900(C)
Appellants: Edwards et al.
Serial No.: 09/525,083
Filed: March 14, 2000
For: A Water Soluble Package

Group: 3721
Examiner: C. Harmon
Edgewater, New Jersey 07020
December 17, 2002

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TECHNOLOGY CENTER R3700

BRIEF FOR APPELLANTS

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellants.

Please charge the \$320.00 fee to our Deposit Account No. 12-1155. Any deficiency or overpayment should be charged or credited to this Deposit Account. This authorization is submitted in triplicate.

Respectfully submitted,

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PATENT

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12/27/2002 AWONDAF1 00000045 121155 09525083

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BRIEF FOR APPELLANTS

TABLE OF CONTENTS

I. Real Party In Interest.....	3
II. Related Appeals and Interferences.....	4
III. Status of Claims	5
IV. Status of Amendments.....	6
V. Summary of the Invention.....	7
VI. Issues for Appeal	8
VII. Grouping of Claims	9
VIII. Appellant's Arguments	10
IX. Conclusion	13
X. Appendix	14

I. REAL PARTY IN INTEREST

The real party in interest is Unilever Home and Personal Care USA, Division of CONOPCO, Inc., a corporation of New York having a principal place of business at 33 Benedict Place, Greenwich, Connecticut 06830.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Ten (10) claims are presently pending.

B. STATUS OF ALL THE CLAIMS

Claims rejected – Claims 1-10

C. CLAIMS ON APPEAL

Claims 1-10 are on appeal.

IV. STATUS OF AMENDMENTS

No amendments were presented after Final Rejection.

Claims 1 to 14 were originally present. Claims 11-14 were canceled as the result of Restriction Requirement. Claim 1 is the only independent claim.

V. SUMMARY OF THE INVENTION

The application is directed to a water soluble package containing a detergent composition. The packaging and transport of water soluble packages containing fluid substances subjects the formed packages to considerable impact forces. A particular problem is that when a number of such packages are loose packed in a larger container which is then transported, the impact forces suffered by the packages within the container can be severe. The difficulty is that in such a situation it only takes one package in the larger container to break for the whole product to be ruined as far as the consumer is concerned because the fluid contents of the broken package may leak over any unbroken packages. Consumer confidence in a product is likely to be badly damaged by such an occurrence. The problem of minimising breakage to an acceptable level is particularly acute in the area of laundry detergents and other domestic consumer products and has not been solved until now. See page 2, line 24 - page 3, line 4 of the specification.

Appellants have surprisingly discovered that the above mentioned problems and disadvantages of known water soluble packages are substantially addressed by the packages according to the invention. In particular, the invention yields water soluble packages which are sufficiently robust to withstand (to a commercially acceptable level) the rigours of packaging and transport even when the fluid substance inside the package is a domestic consumer product such as a laundry detergent. The combination of thermoforming the packages of the invention and forming the packages into a dome shape confers surprising advantages on the packages of the invention. See page 3, line 26 - page 4, line 3 of the specification.

It is important that the body wall be thermoformed rather than cold formed because appellants have discovered that cold forming stresses the film and weakens the end package as a result. See page 4, lines 27-31 of the specification.

VI. ISSUES FOR APPEAL

The Issues that remains in the case are defined by the Examiner's rejection and are as follows:

- I. Whether claims 1-5 and 8-9 are anticipated by Aasted (US Patent 5,635,230);
- II. Whether claims 1 and 5-10 are anticipated by Dickler (US Patent 6,037,319);
- III. Whether claims 2-4 are obvious over under 35 USC §103(a) over Dickler et al., (US 6,037,319).

VII. GROUPING OF CLAIMS

All claims stand or fall together.

VIII. APPELLANTS' ARGUMENTS

Whether claims 1-5 and 8-9 are anticipated by Aasted (US Patent 5,635,230).

The Examiner alleges that Aasted discloses sheets of thermoformed water soluble materials 21 and 23 in Figure 6a. Appellants respectfully disagree. Aasted differs from the present claim 1 and claims dependent therefrom in at least that:

- Aasted does not disclose sheets of thermoformed material;
- Aasted does not disclose sheets of materials;
- Aasted does not disclose thermoformed material.

Appellants submitted for the record the relevant pages of the American Heritage Dictionary of the English Language, wherefrom it is clear that the prefix "thermo-" indicates pertaining to or caused by heat. By contrast, Aasted discloses cold forming. Furthermore, Aasted discloses cold forming pieces of chocolate (shells) rather than a sheet of material. In other words, the starting material of Aasted is not a sheet of water-soluble material. Rather, the chocolate shell of Aasted is the end result of his cold forming process. Thus, in Aasted disclosure there is neither a sheet of thermoformable material, nor thermoforming. Examiner's attention is called to page 4, lines 27-31 of the invention wherein appellants discuss the difference between thermoforming and cold forming. Of course, if one were to use thermoforming in Aasted's invention, one would just get melted chocolate rather than a sheet of thermoformed material, so cold rather than thermoforming is essential for Aasted.

The Examiner has not responded in the Final Rejection to appellants' argument. Rather, the Examiner maintains that cooling is equivalent to thermoforming. The Examiner has not responded at all to the Appellants' argument regarding the sheet of material.

Whether claims 1 and 5-10 are anticipated by Dickler (US Patent 6,037,319).

Dickler does not disclose either thermoforming or dome-shaped packages. Dickler appears to address the shape and the formation of his package in a single passage at column 3, lines 24-37. Rather than teaching a dome shape of the present invention, Dickler appears to teach a rectangular form. Furthermore, there is no disclosure whatsoever of thermoforming of any sheets of any material to form a body wall of the Dickler packages. Rather, Dickler merely teaches sealing two sheets together, without mentioning thermoforming, let alone dome shape. The Examiner has not responded to the appellants' argument submitted after the first rejection over Dickler. The Examiner has not responded to the appellants' arguments submitted in Response to the Examiner's Final Rejection of claims 1 and 5-10 over Dickler.

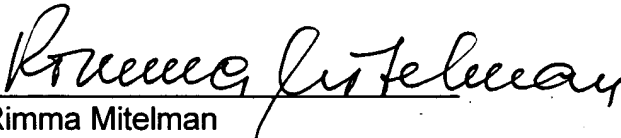
Whether claims 2-4 are obvious over under 35 USC §103(a) over Dickler et al., US 6,037,319).

With respect to the obviousness rejection of claims 2-4, claims 2-4 are dependent upon claim 1 and it is not seen how one of ordinary skill in the art would have been led by Dickler to either use height/weight ratio, or thermoforming, or dome-shaped packages. The Examiner has not responded to the appellants' arguments submitted in Response to the Examiner's Final Rejection of claims 2-4 over Dickler.

IX. CONCLUSION

Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection.

Respectfully submitted,


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APPENDIX OF CLAIMS (37 C.F.R. 1.192(c)(9))

The text of the claims involved in the appeal is:

1. A water soluble package containing a fluid substance for release on dissolution of the package, characterised in that the package has a body portion for containing the substance comprising a first sheet of a water soluble material thermoformed to form a body wall of the body portion, and a second sheet of water soluble material superposed on the first sheet and sealed thereto along a continuous region of the superposed sheets to form a base wall of the body portion, and in that the body portion of the package is generally dome shaped.
2. A package according to claim 1, characterised in that the maximum height of the body wall above the base wall is less than or equal to the maximum width of the base wall.
3. A package according to claim 1, characterised in that the base wall is generally circular.
4. A capsule according to claim 1, characterised in that the base wall is generally oval.
5. A package according to claim 1, characterised in that the base wall is generally flat, or slightly concave or convex.
6. A package according to claim 1, characterised in that the first sheet of water-soluble film comprises polyvinyl alcohol or a polyvinyl alcohol derivative.
7. A package according to claim 1, characterised in that the second sheet of water soluble material comprises polyvinyl alcohol or a polyvinyl alcohol derivative.

8. A package according to claim 1, characterised in that the fluid substance is a liquid, paste or a gel.
9. A package according to claim 1, characterised in that the fluid substance is a domestic consumer product.
10. A package according to claim 9, characterised in that the substance is a laundry detergent composition.